THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.A.NOS. 2255 OF 2005

JUDGMENT: (per HON'BLE SRI JUSTICE RAMESH RANGANATHAN)

Between:

P. Anil Kumar .... Petititioner

And

1. The Commissioner of Technical Education,
Hyderabad and 3 others ... Respondents

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Aggrieved by the order, in W.P.8712 of 2004 dated 14.5.2005, wherein his request that the 1st respondent's letter dated 7.4.2004 and Memo dated 2.8.2002 be declared illegal and unconstitutional and that he be declared senior to the 4th respondent in the cadre of Lecturer was rejected, the petitioner has preferred the present appeal.

The 4th respondent, an A.M.I.E, (a diploma equivalent to a bachelor's degree in Engineering), was appointed in the Kamala Nehru Polytechnic for Women, a fully aided private educational institution, as a Demonstrator in Civil Engineering on 15.11.1980. A Notification was issued inviting applications for filling up of certain posts in the said Polytechnic including that of a Lecturer in Civil

Engineering. In the selection process held pursuant thereto, the petitioner was selected and appointed as a Lecturer with effect from 25.9.1992. The Government had earlier issued G.O.Ms. No.948 dated 23.12.1982 for unification of the cadres of Demonstrators and Assistant Lecturers in Government Polytechnics and had prescribed the staff structure. Persons working as demonstrators were to be re-designated as Associate Lecturers in case they were degree holders or diploma holders with five or more years of service as Demonstrators or as and when the Demonstrators completed five years of service or acquired a degree or equivalent qualification. Demonstrators, who were degree holders, irrespective of their length of service were to be designated as Associate Lecturers. Assistant Lecturers, who were degree holders and had put in 3 or more years of service as Assistant Lecturers, were re-designated as Lecturers. Degree holders with less than 3 years of service, as Assistant Lecturers were re-designated as Associate Lecturers. As and when these degree-holder Assistant Lecturers completed 3 years of service, as Assistant Lecturers, they were to be re-designated as Lecturers. Diploma Holders, with 10 years or more service as Assistant Lecturers, were entitled to be redesignated as Lecturers. Diploma holders, with less than 10 years of

service as Assistant Lecturers, were to be re-designated as Associate Lecturers and, as and when the Diploma Holder Assistant Lecturers had put in 10 years of service as Assistant Lecturers, they were to be redesignated as a Lecturer. The note thereunder prescribed that, if a candidate acquired a degree before completing 3 years service as an Assistant Lecturer, he had to wait until he completed 3 years service as an Assistant Lecturer to become eligible for the lecturer scale of pay. Consequent thereto the cadre of Demonstrators was abolished.

The 4th respondent, who was appointed as a Demonstrator on 15.11.1980, was promoted as an Assistant Lecturer on 14.11.1985 and, on 6.1.1992, she appeared for the AMIE final examination. On the other hand, the petitioner (appellant), a Post Graduate in Engineering, was directly recruited as a Lecturer on 25.9.1992. Under the Proceedings of the Director of Technical Education, dated 15.10.1993, the 4th respondent, who was earlier redesignated as an Associate Lecturer with effect from 14.11.1985, by proceedings dated 26.6.1991, was redesignated as a Lecturer with retrospective effect from 6.1.1992, the date following the last date of A.M.I.E. examination which the incumbent passed. Consequent to the 4th respondent

being redesignated as a Lecturer, vide proceedings dated 15.10.1993, with retrospective effect from 6.1.1992, she became senior to the petitioner -appellant who was appointed as a Lecturer with effect from 25.9.1992.

The petitioner – appellant, claiming seniority over the 4th respondent, submitted a representation on 19.6.2001 to the Management of the Polytechnic to consider his case for promotion as the Head of the Department of Civil Engineering, which had fallen vacant on 30.6.2001. The 4th respondent requested the 1st respondent to consider her case for appointment as the Head of the Department pursuant to which the 1st respondent, vide proceedings dated 27.6.2001, directed the management of the Polytechnic not to fill up the post of the Head of the Department till the seniority dispute was resolved. The first respondent also called for a report from the management of the Polytechnic with a view to identify the correct seniority position. According to the petitioner, the 3rd respondent – Principal had recommended the 4th respondent's case for appointment as the Head of the Department and consequent thereto the 1st respondent, on 2.8.2002, issued directions to the management of the Polytechnic to appoint the 4th respondent as the Head of

the Department. Subsequently, the Governing Body of the Polytechnic is said to have informed the 1st respondent that the petitioner was senior to the 4th respondent and was therefore required to be promoted as the Head of the Department instead of the 4th respondent. The 1st respondent, vide proceedings dated 7.4.2004, reiterated his earlier direction, issued in proceedings dated 2.8.2002, to promote the 4th respondent as the Head of the Department on the ground that she was senior to the petitioner in the cadre of Lecturer.

The learned Single Judge, in his order in W.P.No.8712 of 2004 dated 14.5.2005, held that under G.O.Ms.No.948 dated 23.12.1982, which was made applicable to private aided polytechnics also, the 4th respondent, a diploma holder in Engineering, was entitled to be designated as a Lecturer on completion of 10 years of service, that she was redesignated as such with effect from 6.1.1992 and that on such redesignation, which proceedings had not been challenged by the petitioner and by efflux of time the 4th respondent had become senior to the petitioner in the cadre of Lecturer as the petitioner was appointed on 25.9.1992 nearly 8 ½ months

after the 4th respondent had been redesignated as a Lecturer in the Civil Engineering Department. The learned Single Judge held that the petitioner had no legitimate claim to claim seniority over the 4th respondent and that the decision of the 1st respondent or the recommendation of the 3rd respondent, considering the case of the 4th respondent as senior to the petitioner, in the cadre of Lecturer in the Civil Engineering Department of the Polytechnic, did not suffer from any legal infirmity warranting interference by the Court. The learned Judge held that neither the proceedings dated 2.8.2002, nor the impugned proceeding dated 7.4.2004, suffered from any infirmity and could not be interdicted in judicial review. While holding that the earlier interim order of *status quo,* dated 30.4.2004, stood dissolved the learned Single Judge dismissed the writ petition.

Sri Nooty Rammohan Rao, learned counsel for the petitioner – appellant, would submit that, under G.O.Ms.No.948 dated 23.12.1982, Diploma Holders with 10 years or more service as Assistant Lecturers were alone entitled for being appointed as a Lecturer and, since the 4th respondent had been redesignated as an Assistant Lecturer with effect from 14.11.1985, she would have completed the minimum required 10 years of service

as Assistant Lecturer only on 15.11.1995, more than three years after the petitioner was appointed, by direct recruitment, as a Lecturer on 25.9.1992. According to the learned counsel, since the 4th respondent had appeared for the last paper of AMIE examination on 6.1.1992, even assuming that the results were announced on the same day, she was required to put in a minimum service of three years from the said date for being promoted as a Lecturer, in which event also she would have been entitled for being redesignated as a Lecturer on 6.1.1995 much after the petitioner had been appointed as a Lecturer, by direct recruitment, on 25.9.1992. Learned counsel would submit that, in any view of the matter, the petitioner was senior to the 4th respondent. Learned counsel would submit that, since this aspect of the matter did not arise for consideration before the learned Single Judge, the writ petition should be remanded back to the Learned Single Judge for hearing since, under G.O.Ms.No.948 dated 23.12.1982, the petitioner was entitled to be treated as senior to the 4th respondent.

Sri P.R. Prasad, learned counsel for the 4th respondent, on the other hand, would submit that, since the proceedings of the Director of Technical Education dated 15.10.1993, whereby the 4th respondent was

redesignated as a lecturer with effect from 6.1.1992, had attained finality and was not under challenge in the present writ petition, the fourth respondent must be held to be senior to the petitioner who was appointed only on 25.9.1992 and the order of the 1st respondent, holding that the 4th respondent was entitled to be promoted as the Head of Department of Civil Engineering, was in order. Learned counsel would also submit that the interpretation placed, on G.O.Ms.No.948 dated 28.12.1992, by the petitioner was erroneous and that Assistant Lecturers, with three years service as Assistant Lecturers, were eligible for being appointed as Lecturer on acquisition of a degree qualification or its equivalent and since the 4th respondent was appointed as an Assistant Lecturer on 14.11.1985, and had put in more than 3 years of service as Assistant Lecturer on 6.1.1992, the date on which she acquired AMIE, (which qualification is equivalent to a degree in Engineering), she was required to be redesignated as a Lecturer in terms of G.O.Ms.No.948 dated 28.12.1992 and that her appointment as a Lecturer, with effect from 6.1.1992, was in order. According to the learned counsel, the three years service required to be put in as an Assistant Lecturer, to be redesignated as a Lecturer, is not after obtaining A.M.I.E, and that

candidates who had put in three years service as Assistant Lecturer, were entitled to be redesignated as Lecturers, as soon as he/she obtained the qualification of a degree in Engineering or its equivalent.

We do not consider it necessary to examine the rival interpretations placed on G.O.Ms.No.948 dated 23.12.1998 in view of the fact that the proceedings of the Director of Technical Education, dated 15.10.1993, is not subjected to challenge in this writ petition. Under the said proceedings dated 15.10.1993, the 4th respondent was redesignated as a Lecturer with effect from 6.1.1992 and, as has been rightly held by the learned Single Judge, the proceedings dated 15.10.1993 redesignating the 4th respondent as a Lecturer, having not been challenged by the petitioner and since the said proceedings has become final by efflux of time, the 4th respondent must be held to be senior to the petitioner. The contention that the impugned proceedings dated 7.4.2004 was passed without giving the petitioner an opportunity of being heard does not also merit acceptance. The petitioner has not shown as to how he was prejudiced by not being afforded such an opportunity, since the proceedings of the Director of Technical Education dated 15.10.1993 redesignating the 4th respondent as a Lecturer, with effect from

6.1.1992, indisputably makes the 4th respondent senior to the petitioner herein, as the latter was appointed, by direct recruitment, as a Lecturer only on 25.9.1992.

Sri P.R.Prasad, learned counsel appearing on behalf of the 4th respondent, would contend that the post of Lecturer is a promotional post and is required to be filled up by eligible candidates available in the feeder category of Assistant Lecturers and only if suitable candidates were not available, and it was essential that the post of Lecturer be filled up by direct recruitment, that a notification was required to be issued. According to the learned counsel, since the 4th respondent was eligible, and was available for being considered for promotion as a Lecturer, the very appointment of the petitioner as a Lecturer by direct recruitment on 25.9.1992 was illegal.

Just as we are not inclined to examine the validity of the redesignation of the 4th respondent as a Lecturer, vide proceedings dated 15.10.1993, in view of the said proceedings not having been challenged in the writ petition, and on account of its having attained finality by efflux of time of more than a decade, we also see no reason to examine a challenge to the validity of the appointment of the petitioner as a Lecturer on 25.9.1992, in the Writ Appeal filed, not by the 4th respondent, but by

the petitioner. The 4th respondent, not having challenged the appointment of the petitioner as a Lecturer on 25.9.1992, cannot now be permitted to do so in the present writ proceedings.

While a faint attempt is made on behalf of the petitioner to contend that the petitioner was unaware of the proceedings dated 15.10.1993, the affidavit filed in support of the writ petition does not support such a contention. Though the affidavit, filed in support of the writ petition, refers to the proceedings dated 15.10.1003 nothing is stated as to when the petitioner came to know of such proceedings or as to why he did not challenge the said proceedings earlier. We are not persuaded to take a view different from that of the learned Single Judge. The Writ Appeal fails and is accordingly dismissed. There shall, however, be no order as to costs.

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B.PRAKASH RAO,J

Date: -09-2006

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RAMESH RANGANATHAN,J

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